

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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	:
ARNOLD SCHANFIELD, individually and on	:
behalf of others similarly situated,	: 07 Civ. 9716 (CM) (JCF)
	:
Plaintiff,	:
	:
- against -	: <b>AFFIRMATION OF</b>
	: <b>NICHOLAS H. DE BAUN</b>
	:
SOJITZ CORPORATION OF AMERICA; JUN	:
MATSUMOTO in his official and individual	:
capacities; and TAKASHI TSUKADA in his	:
official and individual capacities,	:
	:
Defendants.	:
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NICHOLAS H. DE BAUN, an attorney at law duly admitted to practice before the Courts of the State of New York, hereby affirms the following under penalty of perjury:

1. I am a member of the bar of this Court and a member of Sidley Austin LLP, counsel for Defendants Sojitz Corporation of America ("SCA"), Jun Matsumoto, and Takashi Tsukada. As such, I am familiar with the facts and circumstances of the instant action. I make this affirmation in opposition to Plaintiff's Motion for Class Certification.
2. The documents attached to this Affirmation are filed under seal in accordance with the Stipulation and Order of Confidentiality filed on March 12, 2008. (A true and correct copy of the Stipulation and Order of Confidentiality is attached hereto as Exhibit 17.)
3. True and correct copies of pages of the transcript of the deposition of Arnold Schanfield, dated July 9 and 10, 2008, are attached hereto as Exhibit 1.
4. True and correct copies of pages of the transcript of the deposition of Mark Killingsworth, dated November 24, 2008, are attached hereto as Exhibit 2.

5. True and correct copies of the expert report of Malcolm Cohen, dated October 15, 2008, are attached hereto as Exhibit 3.

6. True and correct copies of the Court's scheduling order, endorsed August 22, 2008, are attached hereto as Exhibit 4..

7. True and correct copies of the expert report of Malcolm Cohen, dated November 20, 2008, are attached hereto as Exhibit 5.

8. True and correct copies of pages of the transcript of the deposition of Takashi Tsukada, dated November 20 and 21, are attached hereto as Exhibit 6.

9. A true and correct copy of an email from Arnold Schanfield to Gary Ferraro, dated September 18, 2006, is attached hereto as Exhibit 7.

10. True and correct copies of pages of the transcript of the deposition of Richard Paice, dated October 24, 2008, are attached hereto as Exhibit 8.

11. True and correct copies of pages of the transcript of the deposition of Gary Ferraro, dated October 10, 2008, are attached hereto as Exhibit 9.

12. Attached as Exhibit 10 is a spreadsheet reflecting certain payments received by rotationals as of April 2008. This spreadsheet is a version of the spreadsheet used by Plaintiff's expert, Dr. Mark Killingsworth, in support of his statistical analysis in this matter, that has been modified solely to show certain annual payments made to rotationals as expressed in U.S. dollars. In particular, for each rotational staff member, the spreadsheet reflect the items Dr. Killingsworth used in calculating rotationals' purported compensation: (1) U.S. base salary; (2) housing allowance; (3) privately owned car allowance; and (4) paid in Japan allowance total. (See Thompson Decl. Exh. M at p. 1, n.3.) The spreadsheet converts amounts expressed in yen into dollars using Dr. Killingsworth's exchange rate of 117 yen to the dollar (*id.*), and then sums

the resulting payments for each rotational, and multiplies the result by 12 to express the amounts used by Dr. Killingsworth on an annualized basis.

13. A true and correct copy of Plaintiff Arnold Schanfield's offer letter, dated June 27, 2006, is attached hereto as Exhibit 11.

14. A true and correct copy of an email from Arnold Schanfield to Richard Paice, dated January 8, 2007, is attached hereto as Exhibit 12.

15. A true and correct copy of an email from Arnold Schanfield to David Bachman, dated May 2, 2007, is attached hereto as Exhibit 13.

16. A true and correct copy of an email from Arnold Schanfield to Tatsuya Morita and others, dated November 29, 2006, is attached hereto as Exhibit 14.

17. A true and correct copy of an email from Arnold Schanfield to Toni Buono, dated May 9, 2007, is attached hereto as Exhibit 15.

18. A true and correct copy of an email from Arnold Schanfield to Asa McLoughlin, dated May 25, 2007, is attached hereto as Exhibit 16.

19. A true and correct copy of the Stipulation and Order of Confidentiality, filed on March 12, 2008, is attached hereto as Exhibit 17.

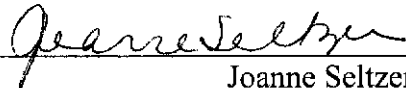
Dated: New York, New York  
February 26, 2009

  
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NICHOLAS H. DE BAUN

**CERTIFICATE OF SERVICE**

I hereby certify that on this 27th day of February 2009, I caused a true and correct copy of the Affirmation of Nicholas H. De Baun to be served on Plaintiff's counsel of record by hand at the following address:

Patricia Ronan, Esq.  
Thompson Wigdor & Gilly  
85 Fifth Avenue, 5<sup>th</sup> Floor  
New York, NY 10003

  
Joanne Seltzer

NYI 6870982v.1

**CONFIDENTIAL – SUBJECT TO COURT ORDER**

**EXHIBITS 1 THROUGH 17 TO THE AFFIRMATION OF NICHOLAS H. DE BAUN  
HAVE BEEN FILED UNDER SEAL PURSUANT TO THE STIPULATION AND  
ORDER OF CONFIDENTIALITY ORDERED BY THIS COURT DATED MARCH 12,  
2008.**